APPENDIX A.

JOHNSON ACT

28 U. S. C. A., Section 41:

"Section 41. (Judicial Code, section 24, amended.) *Original jurisdiction.* The district court shall have original jurisdiction as follows:

"Section 41, sudb. (1)

"(1) *United States as plaintiff; civil suits at common law or in equity.* First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is [1] between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory, or (c) is between citizens of a State and foreign States, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board of commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the

ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. As amended May 14, 1934, c. 283, Sec. 1, 48 Stat. 775; Aug. 21, 1937, c. 726, Sec. 1, 50 Stat. 738; April 20, 1940, c. 117, 54 Stat. 143."

APPENDIX B.

DECLARATORY JUDGMENT ACT

Title 28, Section 400, United States Code Annotated:

"Section 400. (Judicial Code section 274d.) *Declaratory judgments authorized; procedure*

"(1) In cases of actual controversy except with respect to Federal taxes the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

"(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

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[1] So in original. Probably should read "is".

"(3) When a declaration or right or the granting of further relief based thereon shall involve the determination of issues the fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not. (Mar. 3, 1911, c 231, Sec. 274d, as added June 14, 1934, c. 512, 48 Stat. 955; as amended Aug. 30, 1935, c. 829, Section 405, 49 Stat. 1027.)"

APPENDIX C.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 9584

MISSISSIPPI POWER & LIGHT COMPANY, Appellant,

versus

CITY OF JACKSON, et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Mississippi.

(January 17, 1941)

Before Foster, Hutcheson, and McCord, Circuit Judges.

Hutcheson, Circuit Judge: The suit was for a declaratory judgment. The material allegations were (1) that plaintiff had a contract[1] with the City of Jackson to furnish gas from the Jackson Field at rates fixed therein, with

[1] Section 1 granted the franchise.

Section 2 fixed its term at 25 years, conditioned on grantee's furnishing natural gas to the inhabitants of the City of Jackson at the rates shown in the schedule, "as long as commercial natural gas is produced in commercial quantities in the City of Jackson or in a radius of forty miles thereof in the State of Mississippi sufficient to supply the demands of the City of Jackson and its inhabitants and its industries."

Section 3 provided; "Puruant to the municipality's rate-making power and the terms and conditions upon which this franchise is given, the municipality establishes the following rates and charges for natural gas service in

an optional provision to seek gas elsewhere when the Jackson Field became insufficient, and furnish it on adequate rates to be fixed; (2) that it had fully complied with the contract; (3) that the Jackson Gas Field is presently and has been for many months, insufficient for the performance of its contract; (4) that having no sufficient supply of contract gas, it has sought, obtained, and is furnishing pipe line gas from foreign fields; (5) that the city pretends that the Jackson Field is still sufficient, refuses to recognize the changed conditions, insists that plaintiff must furnish gas from the Jackson Field at the rates provided in the contract when there is not sufficient gas there to do so and refuses to fix reasonable rates for the pipe line gas plaintiff is compelled to furnish.

The prayer was for a declaration that; "(a) Under its said contract, plaintiff has a right, as at now, and from February 7, 1940, to furnish in said City pipeline gas, and that the rates prescribed by Section 3 of the contract *do not apply thereto*", "(b) That under said contract, plaintiff has the right, if the Court be of opinion that said plaintiff may not so furnish pipeline gas, to *discontinue furnishing* said City and its inhabitants pipeline gas and to leave the said City solely dependent upon that portion of the gas originating from said Jackson field that plaintiff may supply."

The city filed its motion to dismiss, asserting among other grounds (1) this court has no jurisdiction of the subject matter and (5) it is without jurisdiction, because within the provisions of the Johnson Act, (U. S. C. A. Title

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Jackson for gas taken from the Jackson natural gas field or from a commercial gas field within a forty mile radius within Mississippi."

Section 5 provided; "Should Jackson gas field or all the gas fields in the State of Mississippi within a radius of forty miles of the City, become insufficient for the performance of that hereunder required of grantee, it may thereafter and not before, obtain natural gas from other fields and rates therefore shall be fixed hereunder that are just and reasonable. This provision is purely optional with the grantee and in no wise imposes any obligation on the grantee to maintain its equipment for manufacturing gas or to contract for any gas from any foreign field." It further provided that grantee might under the option, supply artificial gas or a mixture of artificial and natural gas and that just and reasonable rates should be fixed therefor.

28, Sec. 41, Subd. (1), the suit is in effect one to enjoin, suspend or restrain the enforcement, operation or execution of an order of a rate-making body of a political subdivision of the State of Mississippi, to-wit, the City of Jackson.

The district judge without an opinion and without otherwise stating the reasons for his action, entered an order dismissing the cause for want of jurisdiction. Plaintiff is here challenging the order as entered erroneously, because its complaint showed the requisite diversity of citizenship and jurisdictional amount, and an actual controversy within the provisions of the Federal Declaratory Judgment Act, Sec. 274, 28 U. S. C. A., which was not within the prohibitions of the Johnson Act. We agree with plaintiff.

It is quite plain that the Johnson Act aside, a case for the exercise of federal jurisdiction is well stated. For, within the settled rule of the applicable authorities,[2] the complaint presents an actual justiciable controversy, appropriate for declaratory judgment relief. The allegations of the complaint, that plaintiff has been compelled to institute and put in effect, reasonable rates for the pipe line gas it is furnishing, aside, every allegation has to do with and is directed to the single question of a determination and declaration as to whether the Jackson Field is insufficient and if it is, as to the rights of the parties under the changed conditions. The allegations as to rates instituted by the plaintiff are not necessary to the tendered issue, no relief is asked as to them and they may and will be disregarded in the consideration and determination of the issue tendered for a declaration, whether the Jackson Field is insufficient and if it is what are the rights of the parties. *Maryland Casualty Co.* v. *Texas Company,* 114 Fed. (2d) 952.

While the declaratory judgment act has not added to the jurisdiction of the federal courts, it has added a greatly valuable procedure of a highly remedial nature. Extending by its terms to all cases of actual controversy "except with

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[2] Gulley v. Interstate Natural Gas Co., 82 Fed. (2d) 145; Aetna Life Ins. Co. v. Haworth, 300 U. S. 227; Currin v. Wallace, 306 U. S. 1; Davis v. American Foundry Company, 94 Fed. (2d) 441; Aetna Life Ins. Co. v. Martin, 108 Fed. (2d) 824; Maryland Casualty Co. v. Texas Co., 114 Fed. (2d) 952.

respect to federal taxes", it should be, it has been given a liberal construction and application to give it full effect. *Currin* v. *Wallace*, 306 U. S. 1, presents a striking instance of its use in a suit between tobacco warehouse men, auctioneers and the Secretary of Agriculture, to determine the constitutionality and effect of the Tobacco Act of August 23, 1935, while a normal, indeed a common use of it has been in the construction of contracts and the declaration of rights under them. It would be difficult we think, to find a case more appropriate than this one for the application of the act or one more aptly illustrating its beneficial uses.

Here the City and the Company, under contractual relations with each other, which oblige the company to furnish gas at rates fixed in the contract while the Jackson Field holds out, and specifically relieve it from so doing when the field has failed, are at loggerheads over the facts upon which their respective rights and duties depend and therefore over their respective rights and duties under the facts.

The company insists that the field is insufficient, the city that it is sufficient. Acting upon its view, the company has made arrangements for bringing in pipe line gas from a distance and is undertaking to exact and collect for that gas, higher rates than those provided for in the contract. The city insisting that the field is sufficient and the contract still holds is resisting these efforts.

An authoritative determination as to the present status of the contract and of the rights and duties of the parties under it is essential in the interests of both city and company and of the public that both serve. For such a case, the declaratory judgment act is made to order.[3] A large portion of appellee's brief is devoted to a discussion of the merits of the cause. Having been dismissed for want of jurisdiction, the merits of the cause are not before us. Neither, for the same reason, are we concerned with the question much discussed in the briefs of both appellant and appellee, with authorities pointing both ways, whether the declaratory judgment jurisdiction is discretionary, that is, whether if the complaint makes out a case under the

[3] Borchard Declaratory Judgments, pages 187, 188, 417, 424, 426, 433, 436, 566, 606, 101 A. L. R. 694.

statute, the exercise of such jurisdiction, may in the court's discretion, be refused. The court having dismissed the cause for "lack of jurisdiction" because the court was of the opinion that "it had no jurisdiction" of it, we are concerned here with questions neither of discretion nor of the merits, but only with whether there was jurisdiction and we think it plain that there was.

The proceedings in the senate in connection with the passage of the Johnson Act, as well as the terms of the act itself, make it clear that it was designed and enacted to prevent the exercise of the injunctive jurisdiction to restrain or suspend the enforcement of orders affecting the rates of public utilities. Neither in terms nor in purpose does the act extend to cases of this kind where rates as such are not in question, and neither injunctive nor other suspensive orders are asked for, but there is merely an invocation of jurisdiction, under the declaratory judgment act, to determine and declare rights, under a contract, which must be settled and determined before either party can safely or justly proceed.

If instead of the company suing to declare the contract at an end, the city were suing to specifically enforce it, there could we think be no question of jurisdiction. There ought to be and we think there is none, when the company sues to have the same contract declared inapplicable, or at an end. This kind of jurisdiction was fully recognized and given effect in *Haworth's* Case, 300 U. S. 227; and it has been and is being given full effect since, in suits by insurance companies to determine whether or not and to what extent their contracts bind them to defend.

No reason presents itself to us why the jurisdiction does not exist fully here. The judgment is reversed and the cause is remanded for further and not inconsistent proceedings.

Reversed and Remanded.

A True copy:
Teste:

(Seal)

Oakley F. Dodd,
Clerk of the United States Circuit
Court of Appeals for the Fifth Circuit.

APPENDIX D.

Senator Hiram Johnson, of California, introduced the so-called Johnson Amendment, and it was, as introduced, in this form:

"A BILL

"To amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to orders of State administrative boards.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: 'Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, and/or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State.'

"Sec. 2. The provisions of this Act shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed."

The Senate Committee reported, May 9th, No. 701:

"We recommend that the bill be amended on page 2, line 3, by striking out the words 'and/or' and inserting, in lieu thereof, the word 'or'.

"As thus amended, we report favorably thereon and recommend the passage of the bill,"

Senator Norris saying:

"This bill has for its object the taking away of jurisdiction of Federal district courts to enjoin, suspend, or restrain the enforcement of any order of an administrative board or commission of a state or to enjoin, suspend, or restrain any action in compliance with such order, where the jurisdiction is based solely upon the ground of diversity of citizenship, or *where* jurisdiction is claimed on an alleged repugnance of such order of such board to the Constitution of the United States, and where such order affects the rates chargeable by a public utility, does not interfere with interstate commerce, and has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy is provided for by the laws of the State."

Thereupon, not having been heard at that term of the Senate, it was reintroduced as amended, Senator Norris, upon Friday, May 26, 1933, saying:

"I would like to say this is the same bill word for word, that was introduced in the last Congress, upon which hearings were held in connection with two other bills proposing to amend this same Federal statute in regard to the jurisdiction of Federal courts. * * *

"The subcommittee at that time reported this bill * * * with a favorable recommendation. This bill, together with the other bill, known as S. 937, were reported by the full committee to the Senate with a favorable recommendation. This particular bill, now known as S. 752, was recommended by the full committee for passage after striking out the words 'and/or' and inserting in lieu thereof 'or'. The bill now known as S. 752 was then known as S. 3243."

On June 6, 1933, Mr. Norris, for the Committee, made this report:

"The committee on the Judiciary, to which was referred the bill (S. 752) to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over controversies relating to orders of State administrative boards, having had the same under consideration, beg leave to make a favorable report thereon and to recommend the passage of the bill.

"This bill is practically the same as S. 3243, introduced in the Seventy-second Congress, first session. That bill, in the Seventy-second Congress, was referred to the Committee on the Judiciary, and the Committee on the Judiciary referred the same to a subcommittee. The subcommittee held unlimited hearings on the bill, both those who favored and those who opposed it were given opportunity without limit to express their views. Among those who opposed the bill was the American Bar Association. This association was represented at the hearing and made an extended argument in opposition to the bill. At the conclusion of the hearings, the sub-committee unanimously made a favorable report to the full committee. The matter was then taken up in the full committee, and, on the 18th day of May 1932, the Committee on the Judiciary ordered the bill favorably reported to the Senate. On account of the crowded condition of the Senate Calendar, the bill was never reached for Senate consideration, and died on the calendar at the expiration of that Congress.

"In the Seventy-third Congress, on the 23rd day of March 1933, the bill was again introduced in practically the same form. The Committee on the Judiciary thereupon again referred the bill to a subcommittee. The subcommittee, after due consideration, reported the bill back to the full comcommittee with a favorable recommendation. Afterward, before the full committee had acted upon this report of its subcommittee, the American Bar Association requested of the Chairman of the Committee on the Judiciary that it again be given an opportunity to be heard in opposition to

the bill, and, upon consideration of this request, the full committee again, for the third time, referred the bill back to the subcommittee, with instructions to hold further hearings. In compliance with the orders of the full committee, the sub-committee granted further hearings, and the American Bar Association, together with others, appeared in opposition to the bill. At the conclusion of the hearings a majority of the subcommittee again reported the bill back to the full committee, recommending that the bill be favorably reported to the Senate. The full committee took up the report of the subcommittee, and after a lengthy discussion the committee (a majority of the full committee voting therefor) ordered the same to be reported again to the Senate, with a favorable recommendation.

"It will thus be seen that the bill has been considered by the Committee on the Judiciary in two Congresses; it has been three times referred to and considered by the subcommittee of the Committee on the Judiciary, and at two of these times hearings were had. One cannot escape the conclusion that those who are opposing the bill are resorting to tactics that can have but one effect, and that is to delay final action by the Congress. The American Bar Association was given full opportunity to express its ideas at the first hearing. Nothing new was presented at the subsequent hearing. It was simply a rehashing of the old argument made over and over again, but by waiting until the Committee on the Judiciary was about to act, and then securing a third reference of the bill to a subcommittee, with directions to hold hearings, those opposed to the bill succeeded in delaying action until it is undoubtedly impossible to get action at the present session of Congress.

"This bill has for its object the taking away of jurisdiction of Federal district courts to enjoin, suspend, or restrain the enforcement of any order of an administrative board or commission of a State or to enjoin, suspend, or restrain any action in compliance with such order, where the jurisdiction is based solely upon the ground of diversity of citizenship or where jurisdiction is claimed on an alleged repugnance of such order of such board to the Constitution of the United States, and where such order affects the rates

chargeable by a public utility, does not interfere with interstate commerce, and has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy is provided for by the laws of the State."

It will be noted that as thus introduced and as thus heard, it did not refer to municipalities, and there was not in these considerations any reference made to municipalities, and this clause integrating municipalities was not had until the bill had passed the Senate and was about to pass the House, when on suggestion from the Congressman from Arkansas that in his state it would not be applicable in any aspect, without hearing, and without argument, this section here invoked was integrated.

The alleged evils wherefor rectification was sought are thus stated (Cong. Rec., p. 8559):

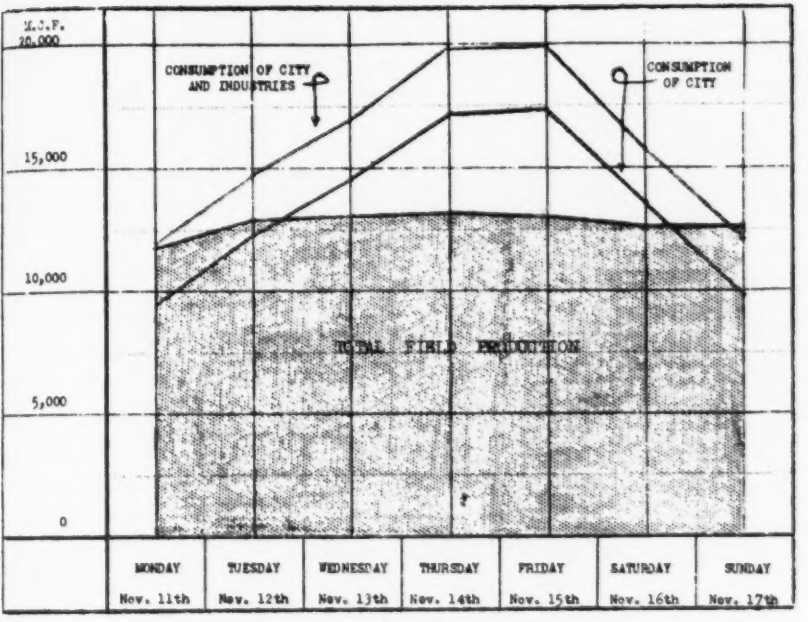
"First. Under the present practice, after a full hearing on rates has been had before the State administrative Board or commission, the utility may and sometimes has applied to the United States district court for an injunction, alleging that rates fixed by the State board or commission are confiscatory, that is to say that such rates deprive the utility of its property without due process of law in violation of the guaranties of the fourteenth amendment to the Constitution of the United States. In the Federal Judicial Code, as it now stands, there is no express provision under which, except by consent of all parties, the United States court can not consider the transcript of the proceedings before the State board or commission. Consequently, under the present practice, the evidence taken before the board or commission is generally disregarded and it is necessary to take all the evidence over again at very great expense in time and money.

"Citizens complaining of rates alleged to be excessive have sometimes been unable, because of limited funds, properly to present their case a second time in the United States court after having already presented it once fully before the board or commission, with the result, so it is claimed, that efforts to secure relief from extortionate rates have had to be abandoned. The mere threat by the utility company that it would seek an injunction in a United States court, involving

the prospect of great additional expense and delay, has sometimes been sufficient to force a compromise unfavorable to the public interest. Even if rate-payers or public regulatory bodies were supplied with sufficient funds to carry on expensive litigation, the procedure of adducing the same evidence twice—once before the board or commission and again before the United States court—is wasteful of time as well as of money. Justice delayed is justice denied.

"Second. Under the laws of every State provision is made for some sort of a review of the orders of the State regulatory board or commission in the courts of the State. In some few cases it appears that, after the hearing before the board or commission, the utility dismissed these proceedings in the courts of the State, and sought and secured an injunction in the district court of the United States. Clearly any such procedure tends to defeat the ends of justice by increasing expense and delay. Furthermore, a litigant should be bound by its election of the forum in which it shall proceed. It should not be permitted to speculate upon what may appear to be the favorable or unfavorable attitude of a tribunal. If it starts in a State court, it should be required to pursue its remedy to the highest court of the State, reserving always its right of appeal to the Supreme Court of the United States."

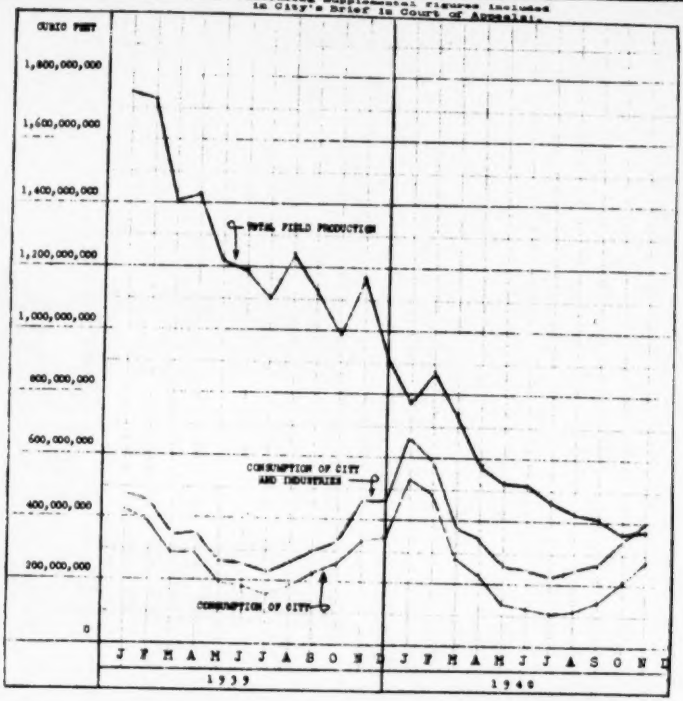
APPENDIX B-



SHOWING TYPICAL NOVEMBER 1940 WEEK

ate	TOTAL PRODUCTION Jackson Field, M.C.F.	TOTAL CONSUMPTION City of Jackson MCF	TOTAL CONSUMPTION Jackson Industries, MCF	TOTAL CONSUMPTION City of Jackson and Jackson Industries, M.C.F.
ov. 11, 1940	11,657	9,483	2,372	11,855
ov. 12, 1940	12,829	12,341	2,317	14,658
ov. 13, 1940	13,034	14,595	2,335	16,930
ov. 14, 1940	13,143	17,233	2,648	19,881
ov. 15, 1940	12,965	17,492	2,430	19,922
ov. 16, 1940	12,567	13,586	2,207	15,793
ov. 17, 1940	12,586	9,874	2,190	12,064
Total	88,781	94,604	16,499	111,103

Appendix B- (Including supplemental figures included in City's Brief in Court of Appeals.



	TOTAL PRODUCTION Jackson Field, M.C.F.	TOTAL CONSUMPTION City of Jackson MCF	TOTAL CONSUMPTION Jackson Industries, MCF	TOTAL CONSUMPTION City of Jackson and Jackson Industries, M.C.F.
Jan. 1939	1,740,012	419,570	57,743	477,313
Feb. 1939	1,725,452	390,046	61,335	451,381
Mar. 1939	1,404,209	289,506	53,683	343,189
Apr. 1939	1,423,128	284,258	69,480	353,738
May 1939	1,201,599	197,424	68,933	266,357
June 1939	1,190,496	184,997	68,479	253,476
July 1939	1,100,949	157,145	68,210	225,355
Aug. 1939	1,237,964	183,280	72,247	255,527
Sept. 1939	1,128,904	225,253	68,429	293,682
Oct. 1939	993,924	256,929	67,957	324,886
Nov. 1939	1,170,795	334,327	122,823	457,150
Dec. 1939	915,228	340,127	116,192	456,319
Jan. 1940	779,159	529,416	136,381	665,797
Feb. 1940	871,395	481,917	104,320	586,237
Mar. 1940	740,835	269,943	101,164	371,107
Apr. 1940	577,671	223,740	119,702	343,442
May 1940	524,393	137,589	118,427	256,016
June 1940	515,669	119,712	123,821	243,533
July 1940	461,970	107,390	113,367	220,757
Aug. 1940	423,951	114,645	132,095	246,740
Sept. 1940	407,524	140,806	128,456	269,262
Oct. 1940	366,468	202,191	137,054	339,245
Nov. 1940	378,131	273,131	122,974	396,105